

Chapter 27.68

Personal Wireless Facilities

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27.68.010 Purpose.

These regulations are adopted to protect the public health, safety and welfare, and to minimize visual impact, while furthering the development of enhanced telecommunications services in the City. These regulations are designed to comply with the Telecommunications Act of 1996 and any other applicable laws. The provisions of this chapter are not intended to and shall not be interpreted to prohibit or to have the effect of prohibiting personal wireless services. This chapter shall not be applied in such a manner as to unreasonably discriminate between providers of functionally equivalent personal wireless services. (Ord. 17588 §1; January 18, 2000).

27.68.020 Definitions.

For the purpose of this chapter, the following terms shall have the meaning ascribed to them below:

Abandonment, in the case of a non co-located facility, shall mean: (a) failure to start operations within 90 days of completion of the structure, or (b) to cease operation for a period of 90 or more consecutive days. In the case of a co-located facility, abandonment shall mean: (a) failure to start operations within 180 days of completion of the structure, or (b) to cease operation for a period of 180 or more consecutive days. In the event that factors beyond a provider's control postpone the start of or cause the temporary cessation of operations of a co-located or non-colocated facility, the time limitations specified herein shall be extended for such period of delay.

Administrative permit shall mean a process and approval by the Planning Director as described in this chapter.

Antenna shall mean any exterior apparatus designed for telephonic, radio, data, Internet, or video communications through the sending and/or receiving of electromagnetic waves, and includes equipment attached to a tower or building for the purpose of providing personal wireless services, including unlicensed wireless telecommunications services, wireless telecommunications services utilizing frequencies authorized by the Federal Communications Commission for “cellular”, “enhanced specialized mobile radio”, “specialized mobile radio” and “personal communications services”, telecommunications services, and its attendant base station.

Antenna support structure shall mean any pole, telescoping mast, tower, tripod, or other structure which supports a device used in the transmitting or receiving of radio frequency signals.

Array shall mean a set of antennas for one carrier or service that are placed on a structure at a given height and spaced so as to avoid interference.

Camouflage describes a personal wireless service facility that is disguised, hidden, or integrated with an existing structure or a personal wireless service facility that is placed within an existing or proposed structure so as to be effectively hidden from view.

Co-location shall mean the location of antenna or an array of antennas on a personal wireless facility or antenna support structure by more than one personal wireless service provider.

Design shall mean the appearance of personal wireless service facilities, including such features as their materials, colors, texture, scale, and shape.

EIA shall mean the Electronics Industry Association.

Equipment enclosure shall mean a structure, shelter, cabinet, or vault used to house and protect the electronic equipment necessary for processing wireless communication signals and associated equipment. Associated equipment may include air conditioning, backup power supplies and emergency generators.

FAA shall mean the Federal Aviation Administration.

FCC shall mean the Federal Communications Commission.

Fall zone shall mean the area on the ground within a prescribed radius from the base of a personal wireless service facility within which there is a potential hazard from falling debris or collapsing material.

Governing authority shall mean the City Council of the City of Lincoln.

Height shall mean the vertical distance above grade to the highest point of the antenna support structure, including the lightning rod and antenna.

Modification shall mean the changing of any portion of a personal wireless service facility from its description in a previously approved permit. Examples include, but are not limited to, changes in design, height, number or location of antennas.

Mount shall mean the structure or surface upon which personal wireless service facilities are mounted. There are three types of mounts: (i) Building mounted – a personal wireless service facility affixed to the roof or side of a building; (ii) Ground mounted – a personal wireless service facility fixed to the ground such as a tower; and (iii) Structure mounted – a personal wireless service facility fixed to a structure other than a building, such as light standards, utility poles, and bridges.

Personal wireless service, personal wireless service facilities, personal wireless facilities and facilities used in this chapter shall be defined in the same manner as in Title 47, United States Code, Section 332 (c)(7)(C), as they may be amended now or in the future and includes facilities for the transmission and reception of radio or microwave signals used for communication, cellular phone, personal

communications services, enhanced specialized mobile radio, and any other wireless services licensed by the FCC and unlicensed wireless services.

Provider shall mean every corporation, company, association, joint stock company, firm, partnership, limited liability company, other entity and individual which provides personal wireless service over personal wireless service facilities.

Screening shall mean materials which effectively hide personal wireless facilities from view, or landscaping in accordance with the requirements of the “Design Standards for Zoning.”

Security barrier shall mean a wall, fence, or berm that has the purpose of sealing a personal wireless service facility from unauthorized entry or trespass.

Site shall mean a tract or parcel of land that contains personal wireless service facilities including any antenna, support structure, building, accessory buildings, and parking and may include other uses associated with and ancillary to personal wireless services.

Special permit shall mean a process and approval as currently described in Chapter 27.63 of the Zoning Ordinance, or as otherwise set forth in City ordinances or regulations.

Tower shall mean any structure that is designed, constructed or used for the primary purpose of supporting one or more antennas, including self-supporting lattice towers, guyed towers, or monopole towers. The term encompasses personal wireless service facilities including microwave towers, common-carrier towers, cellular telephone towers or personal communications services towers, alternative tower structures, and the like.

Unlicensed wireless services shall mean commercial mobile services that operate on public frequencies and do not need a FCC license. (Ord. 17588 §2; January 18, 2000).

27.68.030 Permits Required.

(a) No person shall locate an antenna or tower for personal wireless services or alter an existing personal wireless services facility upon any lot or parcel except as provided in this chapter.

(b) Maintenance or repair of a personal wireless service facility and related equipment, excluding structural work or changes in height, dimensions or number of antenna, towers, or buildings, is excluded from the requirement to obtain an administrative or special permit. However, building permits may still be required.

(c) Installation of personal wireless service facilities requires either an administrative permit issued by the Planning Director or approval of a special permit by the Planning Commission.

(1) Administrative Permit: In any zoning district, the Planning Director may issue an administrative permit approving an application to replace an existing tower or to co-locate additional antennas on a camouflaged facility or rooftop facility, or facility subject to an existing special permit, if the application does not exceed the permitted height in the district or the height as allowed by special permit, and will have minimal adverse effect on the surrounding property, entryway corridors to the City, Capitol Environs District, Capitol View Corridors as described in Section 27.56.017, landmarks or landmark districts designated in accordance with Chapter 27.57, or properties listed or eligible to be listed on the National Register of Historic Places.

Within 45 days of receiving a complete application, the Planning Director shall act on the request for an administrative permit, or shall refer the application to the Historic Preservation Commission, Nebraska Capitol Environs Commission, and/or Planning Commission for public hearing as may required

under Chapter 27.56, Chapter 27.57, or Chapter 27.63 of the Lincoln Municipal Code, or the other requirements of this Code.

If a request for an administrative permit is not acted upon within 45 days, or is denied, or the conditions imposed thereon are unacceptable to the applicant, then the applicant may, by written notice to the Planning Director, convert the request for an administrative permit to an application for a special permit. Moreover, an applicant may, in lieu of and without first seeking an administrative permit hereunder, request a special permit for its proposed facility.

(2) Special Permit: All towers and additions to existing facilities not issued or eligible for an administrative permit and all requests for a special permit shall be reviewed and evaluated, according to the procedure established in Chapter 27.63 of the Lincoln Municipal Code. In the event that the proposed special permit is denied by the Planning Commission, no new request shall be made for the same or substantially similar administrative or special permit within a period of three months after denial thereof.

Any decision to deny a special permit under this chapter shall be made in writing and shall state the specific reasons for the denial. Any denial by the Planning Commission may be appealed to the City Council. Any denial by the City Council shall be deemed a final administrative decision, subject to judicial review and appeal. (Ord. 17588 §3; January 18, 2000).

27.68.040 Term of Permit.

An administrative or special permit granted hereunder shall be in effect for a term of fifteen years unless it is sooner terminated due to abandonment or failure to comply with this Code. (Ord. 17588 §4; January 18, 2000).

27.68.050 Renewal Applications.

A permittee that desires to renew its administrative or special permit hereunder shall, not more than 365 days nor less than 90 days before expiration of the current permit, file an application with the City for renewal of its permit which shall include the applicable information required pursuant to the permit application. (Ord. 17588 §5; January 18, 2000).

27.68.060 Renewal Determinations.

After receiving a complete application hereunder, the Planning Director in the case of an administrative permit and the Planning Commission in the case of a special permit, shall make a determination granting or denying the renewal application in whole or in part. If the renewal application is denied, the determination shall include the reasons for non-renewal. The standards enumerated in this Code shall apply when determining to grant or deny the application, plus a determination of the applicant's compliance with the requirements of this Code. (Ord. 17588 §6; January 18, 2000).

27.68.070 Obligation to Cure As a Condition of Renewal.

No permit shall be renewed until any ongoing violations or defaults in the permittee's performance of the requirements of this Code, and all applicable laws, statutes, codes, ordinances, rules and regulations have been cured, or a plan detailing the corrective action to be taken by the permittee has been approved by the City. (Ord. 17588 §7; January 18, 2000).

27.68.080 Location Preferences.

Personal wireless facilities shall be located and designed to minimize any significant adverse effect on the abutting property. Sites shall be placed in locations where the existing topography, vegetation, buildings, or other structures provide the greatest amount of screening. The locational preferences for siting new personal wireless service facilities are listed below:

(a) Preferred Location Sites:

(1) Publicly owned sites on which personal wireless facilities can be unobtrusively located with due regard to visibility, aesthetic issues, traffic flow, public safety, health and welfare. Such sites may include locating on existing buildings, co-locating on existing towers, screened roof-top mounts, water towers, billboards, electric substations, or other camouflaged sites, but shall not include new towers.

(2) Privately owned sites on which personal wireless facilities can be unobtrusively located with due regard to visibility, aesthetic issues, traffic flow, public safety, health and welfare. Such sites may include locating on existing buildings, co-locating on existing towers, screened roof-top mounts, water towers, billboards, electric substations, or other camouflaged sites, but shall not include new towers.

(3) Publically owned sites in which the facility is minimally obtrusive, has a minimal impact on the surrounding area, is an appropriate distance from residential land uses, has minimal impact on residential uses, with due regard being given to the scale of the facility and the surrounding area and the impact on the location.

(4) Sites in commercially or industrially zoned districts in which the facility is minimally obtrusive, has a minimal impact on the surrounding area, is an appropriate distance from residential land uses, has minimal impact on residential uses, with due regard being given to the scale of the facility and the surrounding area and the impact on the location.

(b) Limited Preference Sites,:

(1) Sites on other public property.

(2) Sites on other commercially or industrially zoned property.

(c) Sensitive Location Sites. Sites located in areas with predominantly residential uses, environmentally sensitive areas, Capitol View Corridors, the Capitol Environs District, entryway corridors, landmarks or landmark districts, properties listed or eligible to be listed on the National Register of Historic Places, the Airport Environs, and other sensitive areas. (Ord. 17588 §8; January 18, 2000).

27.68.090 Application Requirements.

(a) Pre-Application Conference. Prior to the acceptance of an application by the City, applicants shall participate in a pre-application conference for the purposes of discussing application requirements, specifics of the site, plans for current and future facilities.

(b) Applications for either an administrative permit or a special permit for a personal wireless facility shall be filed with the Planning Director and shall include the following:

(1) A plot plan of the lot and the proposed uses drawn to an accurate scale and showing all pertinent information. The application material shall provide sufficient information, as determined by the Planning Director, to allow a complete review of the proposal. The application material shall also include sufficient detail to indicate compliance with design standards. Failure to provide adequate information may result in the rejection of the application.

(2) A statement identifying which location preference, identified in Section 27.68.080, the proposed facility is meeting. If the proposed location is not a preferred location site, describe:

- (i) Whether any preferred location sites are located within the service area of the proposed personal wireless service facility;
- (ii) What good faith efforts and measures were taken to investigate each of these preferred location sites and why such efforts were unsuccessful;
- (iii) Why the use of a preferred location site is not technologically, legally or economically feasible;
- (iv) How and why the proposed site is required to meet service demands for the proposed facility and citywide network; and
- (vi) The distance between the proposed facility and the nearest residential unit and residentially zoned properties.
- (3) A description of the security barrier surrounding the base of the tower and accessory equipment. The description should include the method of fencing, finished color and, if applicable, the method of camouflage and illumination. Access shall be through a locked gate. The tower shall either have no climbing devices attached to the lower twenty feet of the tower or shall be fitted with anti-climbing devices.
- (4) A statement indicating proposed measures designed to minimize potentially adverse visual effects on adjacent properties with consideration given to design, unobtrusiveness, minimum height necessary to accommodate antenna, avoidance of artificial light and coloring provisions;
- (5) Provide a description of the anticipated maintenance and monitoring program for the antennae and back up equipment, including frequency of maintenance services.
- (6) Provide copies of any environmental documents required by any federal agency. (Ord. 18229 §5; August 18, 2003; prior Ord. 17588 §9; January 18, 2000).

27.68.100 Standards for Evaluation.

- (a) The Planning Commission may approve, by special permit, a personal wireless facility in any zoning district after review and consideration of all of the following:
 - (1) Conformity with Comprehensive Plan.
 - (2) Preference of site location in accordance with Section 27.68.080.
 - (3) Compatibility with abutting property and surrounding land uses.
 - (4) Adverse impacts such as the visual, environmental or noise impacts;
 - (5) Screening potential of existing vegetation, structures and topographic features, and screening potential of proposed facilities, ground level equipment, buildings and tower base.
 - (6) Scale of facility in relation to surrounding land uses.
 - (7) Compatibility with surrounding uses.
 - (8) Impact on views/vistas.
 - (9) Impact on landmark structures/districts, historically significant structures/ districts, architecturally significant structures, landmark vistas or scenery and view corridors from visually obtrusive antennas and back-up equipment.
 - (10) Impact on natural resources, open spaces, recreational trails, and other recreational resources.
 - (11) Color and finish.
 - (12) Ability to co-locate.
 - (13) Availability of suitable existing structures for antenna mounting.

(b) An application to construct new towers may be denied if the applicant has not shown by substantial evidence that it has made a good faith effort to mount the facilities on an existing structure and/or tower.

(c) Locations in sensitive location sites shall be considered only if the applicant:

(1) Provides evidence showing what good faith efforts and measures were taken to secure a preferred location site or limited preference site within one-half mile of the proposed facility; and

(2) Demonstrates with engineering evidence why each such preferred location site or limited preference site was not technologically, legally or economically feasible.

(d) Personal wireless facilities approved by special permit may be allowed to exceed the height of the district in which they are located.(Ord. 17588 §10; January 18, 2000).

27.68.110 Design Criteria for Personal Wireless Service Facilities.

(a) Equipment enclosures used primarily for personal wireless service facilities: Ground level equipment, buildings, and the tower base shall be screened from public view. The standards for the equipment buildings are as follows:

(1) The maximum floor area is 450 square feet and the maximum height is twelve feet. The Planning Commission may increase the maximum area to accommodate co-location.

(2) Ground level buildings shall be screened from view by landscape plantings, fencing, or other appropriate means, as specified herein or in the Design Standards for Zoning.

(3) Equipment buildings mounted on a roof shall have a color, and texture similar to the exterior building walls.

(4) Equipment buildings which are located in residential zones shall be designed so as to conform in appearance with residential structures.

(5) Equipment buildings, antenna, and related equipment shall occupy no more than twenty-five percent (25%) of the total roof area of a building, which may vary in the City's sole discretion if co-location and an adequate penthouse type structure are used.

(6) All base equipment and structures shall be located no closer to the property line than the minimum setback for the zone in which it is located.

(b) Security Fencing: A well-constructed fence not less than six feet in height from the finished grade shall be provided around each tower and equipment enclosure. Access to the tower shall be through a locked gate. Screening shall be in conformance with design standards.

(c) Color\Finish\Lights: The tower shall have a galvanized finish. It shall not be painted in alternate bands of distinctive orange and white colors or equipped with lights unless specifically required for safety reasons by a governmental agency having jurisdiction thereof. If so required, such lights shall not exceed the necessary minimum standards therefor. The color, finish and lighting of the facility shall be specified at the time of application review. No signals, lights, or signs shall be permitted on towers unless required by the FCC or the FAA. Options on lighting shall be indicated on the application.

(d) Antenna Accommodations. In order to reduce the number of antenna support structures needed in the City in the future, any new proposed support structure shall be designed to accommodate antenna for at least one additional provider. Area shall be reserved for other providers' equipment near the base of the applicant's tower, unless co-location is shown to be infeasible. The site plan for towers in excess of 100 feet in height must propose space for two comparable providers, while the site plan for

towers of 100 feet or less in height must propose space for one comparable provider, unless co-location is shown to be infeasible.

(e) Antenna Criteria: Antenna on or above a structure shall be subject to the following:

(1) The proposal shall demonstrate that the antenna and support structure are safe and the surrounding areas will not be negatively affected by support structure failure, falling ice, or other debris. All support structures shall be fitted with anti-climbing devices as required in Section 27.68.090(b)(3).

(2) Antenna attached to the wall of an existing building shall be mounted in a configuration as flush to the wall as technically possible and should not project above the wall on which it is attached, unless adequately screened.

(3) The antenna shall be architecturally compatible with the building and /or wall on which it is mounted, and designed and located so as to minimize any adverse aesthetic impact. The antenna shall be constructed, painted, or fully screened to match as closely as possible the color and texture of the building and wall on which it is mounted.

(4) The antenna may be attached to an existing conforming mechanical equipment enclosure which projects above the roof of the building, but may not project any higher than that allowed in the applicable zoning district.

(5) If an accessory equipment shelter is present, it must blend with the surrounding buildings in architectural character and color.

(6) Roof mounted antenna and related base stations shall be completely screened from view by materials that are consistent and compatible with the design, color, and materials of the building.

(7) Rooftop mounts and related base stations shall be screened and integrated with the design of the building.

(8) Antenna attached to the roof of a building, an existing tower, a water tank, or a similar structure must be either:

(i) Omnidirectional or whip antenna no more than seven inches in diameter; or

(ii) Panel antenna no more than two feet wide and eight feet long.

(9) Antenna, antenna arrays, and support structures shall not extend more than the permitted height in the applicable zoning district. The antenna, antenna array, and their support structure shall be mounted so as to blend with the structure to which the antenna is attached. The antenna and its support structure shall be designed to withstand a wind force of 100 miles per hour without the use of supporting guy wires. The antenna, antenna array, and their support structure shall be a color that blends with the structure on which they are mounted.

(f) Free-standing roof-top antenna support structures: The roof-top structure must be architecturally and visually (color, size, bulk) compatible with surrounding existing buildings, structures, vegetation, and/or uses. Such facilities will be considered architecturally and visually compatible if they are camouflaged to disguise the facility.

Site location and development shall preserve the pre-existing character of the site as much as possible. Existing vegetation should be preserved or improved, and disturbance of the existing topography of the site should be minimized, unless such disturbance would result in less visual impact of the site on the surrounding area. The effectiveness of visual mitigation techniques must be evaluated by the City, in the City's sole discretion.

(g) Fall Zone. Towers and other camouflaged support structures shall be set back a distance no less than one half than the height of the structure. The Planning Commission may grant a reduction in

the required fall zone when it finds that such reduction will not adversely impact adjacent properties, and is consistent with the intent of this title to promote the public health, safety and welfare. However in no instance shall the setback be less than that required by the underlying zoning district. (Ord. 17588 §11; January 18, 2000).

27.68.120 General Requirements.

The personal wireless service provider shall comply at all times with the current applicable FCC and FAA standards and regulations, and any of those of other agencies of the federal government with authority to regulate towers and antennas.

(a) **Building Codes; Safety Standards.** To ensure the structural integrity of towers, the owner of a tower shall ensure that it is maintained in compliance with standards contained in applicable City building codes and the applicable standards for towers that are published by the Electronic Industries Association ("EIA"), as amended from time to time. If, upon inspection, the City concludes that a tower fails to comply with such codes and standards, then upon notice being provided to the owner of the tower, the owner shall have thirty (30) days to bring the tower into compliance with such standards. If the owner fails to bring its tower into compliance within thirty (30) days, the City may remove the tower at the owner's expense.

(b) **Structural Design.** Towers shall be constructed to the EIA Standards, which may be amended from time to time, and all applicable construction/building codes. Further, any improvements and/or additions to existing towers shall comply with the requirements of this chapter and shall require submission of site plans sealed and verified by a professional engineer which demonstrate compliance with the EIA Standards and all other good industry practices. The plans shall be submitted and reviewed at the time building permits are requested.

(c) **Required Parking.** Parking shall be required as per Chapter 27.67 of the Zoning Code.

(d) **Tower Separation.** An applicant will be required to demonstrate why it is necessary from a technical standpoint to have a tower within one-half (1/2) mile of a tower whether it is owned or utilized by applicant or another provider.

(e) **Surety and Indemnity Requirements.**

(1) Prior to issuance of a building permit, the applicant shall post a surety, approved by the City Attorney, with the City in the minimum amount necessary, as determined by the City, to guarantee the future removal of the facilities. The surety may not be revoked or terminated during the term of the permit. The City may use the surety for any expenses it incurs in removing any of the provider's facilities.

(2) A provider shall at its sole cost and expense, indemnify and hold harmless the City, its officers, officials, boards, commissions, agents, representatives, and employees against any and all claims, suits, losses, expenses, causes of actions, proceedings, and judgments for damage arising out of, resulting from, or alleged to arise out of or resulting from the construction, operation, repair, maintenance or removal of the provider's facilities. Indemnified expenses shall include, but not be limited to, all out-of-pocket expenses, such as costs of suit and defense and reasonable attorney fees, and shall also include the reasonable value of any services rendered by the City Attorney's office and any employees of the City and any consultants retained by the City.

(f) Safety Inspection Requirements. The facility operator shall conduct safety inspections in accordance with the EIA and FCC Standards and within 60 days of the inspection, file a report with the Department of Building and Safety. (Ord. 17588 §12; January 18, 2000).

27.68.130 Non-use; Abandonment.

In addition to the definition of abandonment provided in Section 27.68.020, facilities shall be considered abandoned ninety (90) days after the expiration of an administrative permit or special permit and partially abandoned in the event that a portion of the antenna support structure is no longer used.

(a) Abandonment: No less than thirty (30) days prior to the date that a personal wireless service provider plans to abandon, partially abandon or discontinue operation of a facility, the provider must notify the City by certified U.S. mail of the proposed date of abandonment, partial abandonment or discontinuation of operation. In the event that a provider fails to give notice, the facility shall be considered abandoned upon the City's discovery of discontinuation of operation for more than 90 and 180 days, as the case may be, on all or part of such facility. Upon such abandonment, the provider shall have sixty (60) days or such additional period of time determined in the reasonable discretion of the City within which to:

(1) Reactivate the use of the facility or transfer the facility to another provider who makes actual use of the facility; or

(2) Dismantle and remove facility. If the facility or portion thereof is not removed within the sixty (60) days time period or additional period of time allowed by the City, the City may remove such tower or portion thereof or antenna at the provider's expense. If there are two or more providers co-locating on a facility, then this provision shall not become effective until all providers cease using the facility or until a portion of the antenna support structure is no longer used.

At the earlier of sixty (60) days from the date of abandonment without reactivation or upon completion of dismantling and removal, City approval for the facility or a portion thereof shall automatically expire.

(b) If ownership of a facility is transferred from one provider to another, the previous provider and the new provider shall be required to notify the City of the change of ownership or transfer within thirty days of the change of ownership or transfer of the facility. The new provider shall be required to make amendments to the application that is on file with the City, in order to provide current information. The new provider shall also provide a surety in accordance with Section 27.68.120. (Ord. 17588 §13; January 18, 2000).

27.68.140 Zoning Districts Allowed.

Personal wireless services facilities may be allowed by administrative or special permit in any zoning district. (Ord. 17588 §14; January 18, 2000).